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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMAL ABDULMUHYEE,

Defendant and Appellant.

G040332

(Super. Ct. No. 07SF0958)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, John Conley, Judge. Affirmed.

Janice R. Mazur, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Melissa Mandel and James D. Dutton, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found Jamal Abdulmuhyee guilty of second degree robbery, attempted second degree robbery, and possession of a deadly weapon. On appeal, Abdulmuhyee asserts the trial court erred in denying his Penal Code section 1118.1 motion to dismiss the robbery and attempted robbery counts because the evidence was insufficient to support those convictions. We conclude the contention lacks merit and, accordingly, we affirm the judgment.

## I

The information filed against Abdulmuhyee related to three separate incidents occurring on the same day, June 28, 2007. Although the jury acquitted him of the attempted robbery charge relating to the first incident, we will include it in our recitation of the facts because the Attorney General argues it must be considered when evaluating the other counts.

### *A. Count 3—Attempted Robbery of Michael F. (Acquittal)*

Thirteen-year-old Michael<sup>1</sup> had just completed summer school for the day at Rancho Santa Margarita Intermediate School (RSMI). At approximately 12:40 p.m., he was approached by two older boys as he walked on the small sidewalk between two school buildings. He recognized one of the older boys as an acquaintance, Joshua P., who was 17 years old. Michael saw Joshua was walking with 23-year-old Abdulmuhyee, who he had seen with Joshua a few times before.

The older boys were heavier and taller than Michael, who weighed 130 pounds and was approximately 5 feet 5 inches tall. Joshua weighed 210 pounds and was 5 feet 9 inches or 5 feet 10 inches tall. Abdulmuhyee was 150 pounds and 6 feet tall.

Joshua grabbed Michael by the front of his neck in a “strangling” position, and told Michael he needed \$20 to get drunk. Michael was shocked, surprised, and scared. Michael stated he was shocked by Joshua’s action because in their prior contacts

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<sup>1</sup> To avoid confusion, we refer to many of the people involved in this case by their first names. We intend no disrespect.

Joshua had always been nice. Michael told Joshua he did not have any money. Joshua held Michael's neck for a total of about 15-to-20 seconds before releasing him. During this encounter, Abdulmuhyee stood six to nine feet away, facing Michael, but he did not say or do anything. Neither Joshua nor Abdulmuhyee were holding baseball bats.

After Joshua let Michael go, he and Abdulmuhyee walked towards the back of the school. Michael went to the front of the school and told his mother what happened. They later reported the incident to the police.

*B. Count 1—Robbery of Tyler D. & Count 2—Attempted Robbery of Scott B.*

Approximately 10 minutes later (12:50 p.m.) two 15-year-old boys, Tyler and Scott were walking on the RSMI grounds near some steps leading to Central Park. They saw four males and one female sitting on benches by an oak tree. As they approached the group, 17-year-old Greg D. walked up to the boys and told them in a "normal" tone someone had tried to shoot one of them earlier and he was checking for guns. Greg was carrying an aluminum baseball bat. Within 30 seconds, Greg called one of his friends to come over from the bench area, which was approximately 15-to-29 feet away.

Greg asked Tyler to hold out his arms, and patted him down like he was searching for a gun. In a normal tone of voice, Greg said "what's this?" and pulled \$3 from Tyler's pocket. He said it was the cost to pass through. Tyler was scared.

The second older boy patted down Scott from his shoulders to his ankles. Tyler recalled the second boy did not have a baseball bat. Scott said he felt awkward and a little scared when he was patted down. He was wearing a backpack containing an iPod and a cellular telephone. These items were not taken from him.

After the boys had been patted down, Abdulmuhyee approached from the bench area carrying a baseball bat. He asked Greg who the boys were. Tyler testified Abdulmuhyee's demeanor was "kind of curious." He was wearing a baseball hat and tapped the bat with his hand. He stood between his two friends. Greg told Abdulmuhyee

the boys were allowed to go, and they were now passing through. Joshua approached the group from the bench area and talked casually to the boys. He did not act in a threatening manner. Joshua asked Scott if he knew his cousin who attended the same school. Soon thereafter, the victims left the area, taking their intended path towards Central Park. The four older boys headed in the same direction, with Greg and Abdulmuhyee in front of the pack.

*C. Abdulmuhyee's Later Interview with Police*

Orange County Deputy Sheriff Joseph Mauga spoke to Michael after the attempted robbery, and he saw the boy had a five inch long red mark on the front of his neck. Mauga later went to Central Park and spoke with Greg on an unrelated case. While Mauga and Greg were talking, Abdulmuhyee approached them to find out what was going on and to make sure his friend was "okay." Mauga asked Abdulmuhyee to sit down, and indicated he wanted to speak with him about what happened to Michael.

Mauga was still talking with Greg when he saw Joshua. Mauga asked Joshua to sit down also because he wanted to discuss what happened to Michael. When Mauga asked Abdulmuhyee about the incident, Abdulmuhyee denied being at RSMI that day. He denied seeing Joshua grab Michael. Abdulmuhyee said he was with Joshua all day. Mauga later viewed RSMI's camera surveillance videos and saw Abdulmuhyee and Joshua together on school grounds at 12:41 p.m. the day of the incidents.

*D. Count 4—Possession of a Deadly Weapon*

Later that evening, Orange County Deputy Sheriff Jason Ito saw Abdulmuhyee and another 17-year-old, Fredrick D., walking with baseball bats in their hands in the area of La Promesa Street and Antonio Parkway in Rancho Santa Margarita. One bat was aluminum, and the other was wooden. Abdulmuhyee told the officer the bats were for protection. Frederick was wearing a batting glove. Abdulmuhyee was wearing two gloves, but Ito did not think it was a batting glove.

### *E. The Case*

Abdulmuhyee was charged with second degree robbery of Tyler (count 1), attempted robbery of Scott (count 2), attempted robbery of Michael (count 3), and possession of a deadly weapon (count 4). The information alleged on-bail enhancements as to all counts, which Abdulmuhyee admitted before trial. It was also alleged Abdulmuhyee personally used a deadly weapon in the commission of counts 1 and 2.

At trial, Michael testified that after Joshua grabbed him, he saw Abdulmuhyee standing approximately six-to-nine feet away. Michael said he could not remember where Abdulmuhyee was looking, stating, “He might have been looking at us, might have been looking away. I’m not sure.” Michael testified he did not hear Abdulmuhyee say anything. “All he did was stand there. He didn’t say anything[.] He didn’t do anything, just stood there.” The jury acquitted Abdulmuhyee of the charged count of attempted robbery.

Scott and Tyler testified about their encounter with the group of older boys. Tyler stated that Abdulmuhyee did not approach until after he and Scott had been patted down and the money had been taken. Tyler described Abdulmuhyee’s demeanor as “kind of curious.” Abdulmuhyee was holding a baseball bat in one hand and tapping it into his other hand. Tyler recalled Abdulmuhyee was not using much force when patting the bat on his hand. Tyler stated that by the time Abdulmuhyee arrived, he had been standing with Greg for nearly two minutes. Abdulmuhyee did not ask for money but only asked Greg who the boys were. Tyler stated he did not think about trying to get his money back because he was afraid. He agreed with the prosecutor that the presence of two bats added to his feelings of fear. When defense counsel asked Tyler if he no longer felt threatened by the time Abdulmuhyee arrived, Tyler said, “No, I was still a little nervous, but I wasn’t feeling any immediate danger.” When questioned more on this issue, Tyler admitted his uneasy feelings started to be alleviated when Abdulmuhyee approached, and

by the time the fourth older boy arrived, Tyler “was still kind of on edge, but [he] didn’t feel like there’s anything [*sic*] going to happen.”

Scott stated he felt awkward and a little scared when he was being patted down. When asked about the baseball bats, Scott stated, “I didn’t think that they were [going to] do anything with them if I didn’t do anything to them first. But it’s kind of intimidating.” Scott said he didn’t fight back because he didn’t want to get hurt. Scott recalled Greg used a normal tone of voice when he took Tyler’s money. He stated Greg did not turn around to tell the others sitting 30 feet away on the bench what had been stolen. Scott recalled the first two men who approached him had bats, and he could not recall if anyone else was carrying a bat. He identified Joshua as being present but not involved. He was unable to identify anyone else. He could not remember ever seeing Abdulmuhyee before, other than in court.

It was the prosecution’s theory Abdulmuhyee was an aider and abettor to the robbery and attempted robberies. The jury found Abdulmuhyee guilty of counts 1, 2, and 4. The trial court struck the weapon enhancements and the on-bail enhancements. It sentenced Abdulmuhyee to a total term of two years and eight months in prison.

## II

The court denied Abdulmuhyee’s motion to dismiss counts 1 through 3. He contends there was insufficient evidence to support his convictions for the Tyler robbery (count 1) and attempted robbery of Scott (count 2) under an aiding and abetting theory because the people failed to establish he knew about the intended crimes and aided and abetted the crimes.

Abdulmuhyee has a “massive burden” to prevail on this claim. (*People v. Akins* (1997) 56 Cal.App.4th 331, 336 (*Akins*).) We review the record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value, such that any rational trier of fact could have found the essential elements of the enhancement beyond a reasonable doubt. (See *People v.*

*Rodriguez* (1999) 20 Cal.4th 1, 11.) Reversal is “unwarranted unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].’ [Citation.]” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

“Defendant’s hurdle to secure a reversal is just as high even when the prosecution’s case depends on circumstantial evidence. The ‘sufficiency of the evidence’ standard of review is the same in cases in which the People rely mainly on circumstantial evidence. [Citations.] “““If the circumstances reasonably justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment.”” [Citations.]” [Citation.]” (*Akins, supra*, 56 Cal.App.4th at pp. 336-337.)

In the case before us, viewing the entire record in the light most favorable to the prosecution, there is sufficient circumstantial evidence to support the judgment. ““A person aids and abets the commission of a crime when he or she, (i) with knowledge of the unlawful purpose of the perpetrator, (ii) and with the intent or purpose of committing, facilitating or encouraging commission of the crime, (iii) by act or advice, aids, promotes, encourages or instigates the commission of the crime.’ [Citations.]” (*People v. Campbell* (1994) 25 Cal.App.4th 402, 409 (*Campbell*).) We agree with the Attorney General that at the time Abdulmuhyee approached the victims, the robbery was ongoing for purposes of aiding and abetting liability. (See *People v. Cooper* (1991) 53 Cal.3d 1158, 1170 [for purposes of determining liability as an aider and abettor, commission of robbery continues so long as loot is being carried away to place of temporary safety].)

“[I]n general neither presence at the scene of a crime nor knowledge of, but failure to prevent it, is sufficient to establish aiding and abetting its commission. [Citations.] However, ‘[a]mong the factors which may be considered in making the determination of aiding and abetting are: presence at the scene of the crime,

companionship, and conduct before and after the offense.’ [Citation.]” (*Campbell, supra*, 25 Cal.App.4th at p. 409.)

Here, all of these factors are present. Abdulmuhyee did not independently happen by the scene of the crime. He purposefully walked with Joshua to the benches to meet with Greg and another friend. Abdulmuhyee had just witnessed Joshua attempt to rob a younger boy, Michael. Within 10 minutes of that crime, Abdulmuhyee saw Greg and a second boy leave the bench area and physically search two different younger boys. Regardless of whether he could hear what was being said, he waited on the sidelines for only about two minutes before joining his friends. He brought along a baseball bat. As he patted the bat, he inquired about the boys. It can be reasonably inferred Abdulmuhyee was aware his two friends were robbing the younger boys because he did not appear surprised when Greg said the boys were “allowed to go, and were just passing through.” Abdulmuhyee did not question why the boys were being detained. As noted by the Attorney General, it could be inferred Greg was reporting on the status of the robbery to Abdulmuhyee, who was the oldest of the group, and perhaps their leader.

In addition to what was said, Abdulmuhyee’s actions were very telling. First, he was located on the sidelines, only 15-to-30 feet away. He then assumed a position standing between the two older boys, serving the purpose of further blocking the way of the younger boys and further intimidating them. Abdulmuhyee did not just hold the bat by his side but rather called attention to the fact he was holding a deadly weapon by patting it against his other hand. Both boys testified the presence of two bats greatly increased their level of unease and fear. From both the bench and from his position with the group, Abdulmuhyee could watch out for others who might approach. The above “conduct is a textbook example of aiding and abetting. [Citations.]” (*Campbell, supra*, 25 Cal.App.4th at p. 409.)

Moreover, the older boys’ concerted action reasonably implied a common purpose or scheme. Despite hearing the younger boys were free to go, Abdulmuhyee



remained at the scene with his three friends and further detained the younger boys from their intended path. Tyler testified he felt compelled to answer their questions and appear to be cooperative. Contrary to Abdulmuhyee's contention, he was certainly more than an innocent bystander.

Finally, the inference Abdulmuhyee knew and aided in the crimes is further supported by the fact Abdulmuhyee lied to a police officer about his whereabouts that day. He denied witnessing Jacob strangle Michael. These lies reasonably create an inference of consciousness of guilt.

Abdulmuhyee argues contrary inferences can be drawn from the evidence. For example, Abdulmuhyee asserts there was no direct evidence he saw or heard his friends "shake down" Tyler and Scott from where he was sitting on the benches, so it can not be inferred he knew a robbery was taking place. Abdulmuhyee points to Tyler's testimony describing his demeanor as "kind of curious" to support the inference he was unaware money had been stolen and he did not intend to help the perpetrators. He discounts the earlier incident with Michael as creating any negative inferences because it involved a different robber. He minimizes the negative inferences created when one lies to the police, arguing it merely showed he later learned about the crimes and he wanted to avoid implication by association.

However, as noted above, the hurdle to secure a reversal is set very high. Abdulmuhyee did not reach it by proposing innocent inferences can be drawn from the evidence. We have concluded the evidence reasonably justified the convictions and therefore "the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment." [Citations.] [Citation.] (*Akins, supra*, 56 Cal.App.4th at pp. 336-337.) Abdulmuhyee's friendship with the perpetrators, and his words and conduct that day, all created the reasonable inference he knew about the scheme to shake down younger kids at the school for money, and he intended to back up his friends by acting as their

wingman. Viewing the evidence in the light most favorable to the prosecution we conclude there was sufficient circumstantial evidence Abdulmuhyee aided and abetted in the robbery and attempted robbery.

III

The judgment is affirmed.

O'LEARY, ACTING P. J.

WE CONCUR:

MOORE, J.

ARONSON, J.